

UNITED STATES DISTRICT COURT

for the

Southern District of New York

White Plains Division

Tonimarie Rhone

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Viviano Consulting Services, Inc.

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Case No. 7:22-CV-08668

(to be filled in by the Clerk's Office)

Jury Trial: (check one) ☐ Yes ☒ No

THE DEFENDANT'S ANSWER TO THE COMPLAINT

I. The Parties Filing This Answer to the Complaint

Provide the information below for each defendant filing this answer or other response to the allegations in the plaintiff's complaint. Attach additional pages if needed.

Name	Francis Paul Viviano
Street Address	3703 Indian Rd
City and County	Ottawa Hills, Lucas
State and Zip Code	Ohio 43606
Telephone Number	419-467-4964
E-mail Address	frank@bviviano.com

II. The Answer and Defenses to the Complaint

A. Answering the Claims for Relief

On a separate page or pages, write a short and plain statement of the answer to the allegations in the complaint. Number the paragraphs. The answer should correspond to each paragraph in the complaint, with paragraph 1 of the answer corresponding to paragraph 1 of the complaint, etc. For each paragraph in the complaint, state whether: the defendant admits the allegations in that paragraph; denies the allegations; lacks sufficient knowledge to admit or deny the allegations; or admits certain allegations but denies, or lacks sufficient knowledge to admit or deny, the rest.

B. Presenting Defenses to the Claims for Relief

Write a short and plain statement identifying the defenses to the claims, using one or more of the following alternatives that apply.

1. The court does not have subject-matter jurisdiction over the claims because *(briefly explain why there is no federal-question jurisdiction or diversity-of-citizenship jurisdiction; see the complaint form for more information)*

2. The court does not have personal jurisdiction over the defendant because *(briefly explain)*

3. The venue where the court is located is improper for this case because *(briefly explain)*

4. The defendant was served but the process-the form of the summons-was insufficient because *(briefly explain)*

5. The manner of serving the defendant with the summons and complaint was insufficient because *(briefly explain)*
The summons of 10/15/2022 was not served to me. It was served to my son who is not associated with Viviano Consulting Services, Inc. My son, Francis Salvatore Viviano is not authorized to to accept service of process on behalf of Viviano Consulting Services, Inc.

6. The complaint fails to state a claim upon which relief can be granted because *(briefly explain why the facts alleged, even if true, are not enough to show the plaintiff's right to recover)*

7. Another party *(name)* _____ needs to be joined (added) in the case. The reason is *(briefly explain why joining another party is required)*

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- a. If the basis for subject-matter jurisdiction is diversity of citizenship, state the effect of adding the other party:
 The other party is a citizen of the State of *(name)* _____.
 Or is a citizen of *(foreign nation)* _____. The amount of damages sought from this other party is *(specify the amount)* _____.
- b. If the claim by this other party is based on an alleged violation of a federal constitutional or statutory right, state the basis:

C. Asserting Affirmative Defenses to the Claims for Relief

Identify an affirmative defense or avoidance that provides a basis for the defendant to avoid liability for one or more of the plaintiff's claims even if the basis for the claim is met. Any affirmative defense or avoidance must be identified in the answer. Include any of the following that apply, as well as any others that may apply.

The plaintiff's claim for *(specify the claim)*

is barred by *(identify one or more of the following that apply)*:

1. Accord and satisfaction *(briefly explain)*

2. Arbitration and award *(briefly explain)*

3. Assumption of risk *(briefly explain)*

4. Contributory or comparative negligence of the plaintiff *(briefly explain)*

5. Duress *(briefly explain)*

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6. Estoppel *(briefly explain)*

7. Failure of consideration *(briefly explain)*

8. Fraud *(briefly explain)*

9. Illegality *(briefly explain)*

10. Injury by fellow employee *(briefly explain)*

11. Laches (Delay) *(briefly explain)*

12. License *(briefly explain)*

13. Payment *(briefly explain)*

14. Release *(briefly explain)*

15. Res judicata *(briefly explain)*

16. Statute of frauds *(briefly explain)*

17. Statute of limitations *(briefly explain)*

18. Waiver *(briefly explain)*

19. Other *(briefly explain)*

Viviano Consulting Services, Inc. does not currently provide any services. It is a shell corporation. Viviano Consulting Services, Inc. does not own or operate any websites.

D. Asserting Claims Against the Plaintiff (Counterclaim) or Against Another Defendant (Cross-Claim)

For either a counterclaim against the plaintiff or a cross-claim against another defendant, state briefly the facts showing why the defendant asserting the counterclaim or cross-claim is entitled to the damages or other relief sought. Do not make legal arguments. State how each opposing party was involved and what each did that caused the defendant harm or violated the defendant's rights, including the dates and places of that involvement or conduct. If more than one counterclaim or cross-claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

1. The defendant has the following claim against the plaintiff *(specify the claim and explain it; include a further statement of jurisdiction, if needed)*:

2. The defendant has the following claim against one or more of the other defendants *(specify the claim and explain it; include a further statement of jurisdiction, if needed)*:

3. State briefly and precisely what damages or other relief the party asserting a counterclaim or cross-claim asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons that are alleged to entitle the party to actual or punitive money damages.

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- a. The defendant asserting the counterclaim or cross-claim against *(specify who the claim is against)* _____ alleges that the following injury or damages resulted *(specify)*:
- _____

- b. The defendant seeks the following damages or other relief *(specify)*:
- _____

III. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this answer: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the answer otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 01/13/2023

Signature of Defendant



Printed Name of Defendant Francis Paul Viviano

B. For Attorneys

Date of signing: _____

Signature of Attorney _____

Printed Name of Attorney _____

Bar Number _____

Name of Law Firm _____

Street Address _____

State and Zip Code _____

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Telephone Number

E-mail Address

It has come to my attention that a lawsuit has been filed against my company, Viviano Consulting Services, Inc. for operating a non ADA compliant website. Apparently the summons of October 15th was issued to Francis Salvatore Viviano who is not associated with Viviano Consulting Services.

Viviano Consulting Services does not own or operate the Bartz Viviano website that is the subject of the lawsuit. Viviano Consulting Services, Inc. is not associated with the florist business that does own and operate the website.

For this reason, I am requesting that this lawsuit be dismissed.

Thank you.


Francis Paul Viviano